

REMARKS

By this amendment, claims 1-35 are pending, in which claims 3 and 6 are amended. No new matter is introduced.

The Office Action mailed April 8, 2005 rejected claims 1, 2, 4, 5, 7-9, 11, 12, 14-16, 18, 19, 21-23, 25, 26, 28-30, 32, 33, and 35 as obvious under §103(a) over *Montpetit* (US 6,366,761 B1) in view of *Liebowitz et al.* (5,812,545).

Applicants appreciate the indication that claims 3, 6, 10, 13, 17, 20, 24, 27, 31, and 34 are allowable if rewritten in independent form.

Applicants respectfully traverse the outstanding rejection on the merits, because in Applicants' view the claimed invention patentably defines over the applied prior art, as next discussed.

Independent claims 1 and 29 recite "transmitting bandwidth allocation requests to a satellite **based upon prior bandwidth allocations** and packets stored within a plurality of queues of the terminal." Independent claim 8 and 15 recite "a bandwidth-on-demand control logic configured to prepare a schedule plan for transmitting the stored packets based upon current bandwidth allocations and the prioritization of the plurality of queues, the **current bandwidth allocations being based upon prior bandwidth allocation** and the stored packets." Independent claim 22 recites "means for transmitting bandwidth allocation requests to a satellite **based upon prior bandwidth allocations** and packets stored within a plurality of queues of the terminal, the plurality of queues being prioritized."

By contrast, *Montpetit* discloses a data communication system that allocates an amount of bandwidth to a ground terminal for uplink transmission to a low-Earth-orbit ("LEO") satellite network (Abstract). The system allocates "[u]plink bandwidth . . . based on a priority status assigned to the data packets to be transmitted." (col. 2, lines 60-61). Generally, "[b]andwidth for transmitting higher priority data packets is allocated before bandwidth for transmitting data packets with a lower priority status." (col. 3, lines 9-12). The priority status assignments enable the communication system to permit "the network to offer a number of different qualities of service to an end user." (col. 5, lines 45-46). Furthermore, the system implements "separate data packet send queues . . . for each of the different priority status levels that may be assigned to a data packet." (col. 7, lines 33-35).

Apparently to satisfy the claimed feature of "transmitting bandwidth allocation requests to a satellite **based upon prior bandwidth allocations**," the Office Action refers to FIG. 5 (specifically block 116). Block 116 of FIG. 5 states the following: "Transmit bandwidth request to satellite using existing bandwidth." Applicants do not understand how this can be considered being "based upon prior bandwidth allocations," as the method step specifically requires "**existing** bandwidth," not "**prior** bandwidth allocations." The accompanying text is equally unhelpful, stating (col. 10: 28-38):

If, at decision block 112, the ground terminal determines that it already has an **existing bandwidth allocation** for transmission of other data packets, the ground terminal transmits the bandwidth allocation request to the servicing satellite **using the existing bandwidth** (block 116). In that regard, the bandwidth allocation request may be piggybacked within a data packet already allocated transmission bandwidth (also known as "in-band" data transmission) as a more efficient alternative to transmission in a separate data packet (i.e., out-of-band transmission).

In fact, neither the cited description (and associated text) nor anywhere within *Montpetit* is there a disclosure of using any type of "prior bandwidth allocations," much less "transmitting bandwidth allocation requests to a satellite **based upon prior bandwidth allocations** and packets stored within a plurality of queues of the terminal."

35 U.S.C. § 132 requires the Director to "notify the applicant thereof, stating the reasons for such rejection." This section is violated if the rejection "is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection." *Chester v. Miller*, 15 USPQ2d 1333 (Fed. Cir. 1990). This policy is captured in the Manual of Patent Examining Procedure. For example, MPEP § 706 states that "[t]he goal of examination is to clearly articulate any rejection early in the prosecution process so that applicant has the opportunity to provide evidence of patentability and otherwise respond completely at the earliest opportunity." Furthermore, MPEP § 706.02(j) indicates that: "[i]t is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to respond." Unfortunately, the Examiner's only discussion of this limitation is a vague reference to a seemingly irrelevant description (i.e., FIG. 5, box 116).

The secondary reference of *Liebowitz et al.* does not cure the deficiencies of *Montpetit*. *Liebowitz et al.* is relied upon for a supposed disclosure of preparing a schedule plan. A *prima facie* of obviousness thus has not been established. To establish *prima facie* obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580

(CCPA 1974). All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Accordingly, Applicants respectfully submit independent claims 1, 8, 15, 22 and 29 should be allowable, along with claims 2, 4, 5, 7, 9, 11, 12, 14, 16, 18, 19, 21, 23, 25, 26, 28, 30, 32, 33 and 35 (depending correspondingly therefrom).

Therefore, the present application, as amended, overcomes the objections and rejections of record and is in condition for allowance. Favorable consideration of this application is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (301) 601-7252 so that such issues may be resolved as expeditiously as possible. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Plastrik', followed by the date '8-8-05'.

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